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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,602	02/27/2002	Guy Thompson	J6703(C)	7085

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/085,602	Applicant(s) THOMPSON ET AL.	
	Examiner Quang D. Thanh	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "said applicator surface" is unclear as to which surface (outer surface or inner surface ?)

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/374480. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because claims 1-16 of copending Application No. 10/374480 disclose all the claimed features of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1- 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Simoncini (3,968,789).

7. Re claims 1, 8 and 15, Simoncini discloses a kit and a method for delivering a cosmetic composition for topical application to human skin (col. 1, lines 5-10) comprising: a massage applicator apparatus 1 (fig. 1) comprising a power source (electric circuit, col. 2, lines 61-66) driving an oscillating mechanism (motor unit, col. 1, lines 65-68 and col. 3, lines 42-43) connected to an interface medium 12 (fig. 5), said massage applicator apparatus further comprising means 6/18/19 (fig. 5) for delivering

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vibration to said interface medium 12, said interface medium 12 having at least one exit orifice 27 (fig. 5); and a cosmetic composition (lotion, col. 3, lines 24-43).

8. Re claims 2-7, 9-14 and 16, the power source comprises an on and off control device 22; a switch 22 (col. 2, lines 61-66); the interface medium 12 comprises an applicator outer surface 14 and an inner surface 13 (fig. 5); and wherein said applicator surface comprises protuberances (bristle 14, fig. 5) thrusting out therefrom; a composition refill system (container 24, fig. 1); a composition delivery system (pipe 25, fig. 1); and a cover 13 seatable over said interface medium.

9. Claims 1- 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Dirks et al. (Pub. No. US2003/0120185).

10. Re claims 1, 8 and 15, Dirks discloses a kit and a method for delivering a cosmetic composition for topical application to human skin ((massage liquid: oil or lotion, p. 3, paragraph 31) comprising: a massage applicator apparatus 10 (fig. 1) comprising a power source 26 (battery 26, fig. 1) driving an oscillating mechanism 84 (vibrator motor 84, fig. 1) connected to an interface medium 16 (fig. 1), said massage applicator apparatus further comprising means 24 for delivering vibration (fig. 3, p. 3, paragraph 36) to said interface medium 16, said interface medium 16 having at least one exit orifice 50 (fig. 3); and a cosmetic composition (massage liquid: oil or lotion, p. 3, paragraph 31).

11. Re claims 2-7, 9-14 and 16, the power source comprises an on and off control device 82, a switch 82 (p. 3, paragraph 36); the interface medium 16 comprises an applicator outer surface 42 and an inner surface 44 (fig. 3); and wherein said applicator

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surface comprises protuberances (nodules 40 or fingers 42 in fig. 3) thrusting out therefrom; a composition refill system (reservoir 54, fig. 1, p. 3, paragraph 34); a composition delivery system (pump 100, fig. 1); and a cover 28 seatable over said interface medium 16 (fig. 3).

12. Claims 1- 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Nachies (1,889,487).

13. Re claims 1, 8 and 15, Nachies discloses a kit and a method for delivering a cosmetic composition for topical application to human skin (massaging to the scalp, the face or the body, p.2, lines 23-29) comprising: a massage applicator apparatus 10 (fig. 2) comprising a power source (electric power fed through cord 12, fig. 1) driving an oscillating mechanism 19 (fig. 2) connected to an interface medium (applicator in fig. 2), said massage applicator apparatus further comprising means 20 for delivering vibration (fig. 2) to said interface medium, said interface medium having at least one exit orifice 25 (fig. 3); and a cosmetic composition (massage liquid: oil, p. 1, col.1, lines 1-5).

14. Re claims 2-7, 9-14 and 16, the power source comprises an on and off control device 32, a switch 32 (p. 2, lines 1-3); the interface medium comprises an applicator outer surface 26 and an inner surface 23 (fig. 2-3); and wherein said applicator outer surface comprises protuberances 28 (fig. 3) thrusting out therefrom; a composition refill system (reservoir 13, fig. 2); a composition delivery system (valve 31, fig. 1); and a cover 26 seatable over said interface medium (fig. 2-3).

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Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Knight '108 discloses an electric back scrubber brush. Springer et al. '290 disclose a massage device having a cavity for storing massaging fluid or lotion. Groenewold et al. '841 discloses a motor-driven hand-held massaging device. Tilman et al. '593 discloses a massaging appliance and cream dispenser unit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh
Patent Examiner
Art Unit 3764
September 21, 2004

(QT)


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
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9/22/04